

Office of the Montana State Auditor,  
Commissioner of Securities and  
Insurance (CSI)  
840 Helena Avenue  
Helena, MT 59601  
(406) 444-2040

**BEFORE THE MONTANA STATE AUDITOR  
COMMISSIONER OF SECURITIES AND INSURANCE**

[illegible]

# NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING

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### **ALLEGATIONS OF FACT**

1. Respondent is a licensed Montana insurance producer, license # 0000058368.
2. In April 2013, K.T. and S.R. requested Respondent procure a homeowner's policy on their behalf.
3. Respondent provided an insurance binder to the closing company to indicate the property was insured. The mortgage company received this information and duly submitted a premium check.
4. In April 2014, the mortgage company discovered the property was uninsured and its check had not been cashed.
5. On May 5, 2015, the CSI sent a warning letter to Respondent regarding this transaction.
6. In June 2015, the CSI discovered this was not an isolated incident *to wit*: from October 2, 2013 – March 3, 2015, Respondent failed to remit payment to an insurance company 3 times regarding D.S.'s account.
7. On June 2, 2015, American National Insurance Company (ANICO) provided the CSI with a total of 8 complaints regarding Respondent. CSI investigators requested Respondent contact them. As of June 11, 2015, he had not done so.
8. The CSI legal department sent a letter to the Respondent requesting information on June 11, 2015. The CSI included a response date of June 19, 2015. To date, Respondent has neither replied to CSI legal staff or its investigators.

### **CONCLUSIONS OF LAW**

1. The CSI has jurisdiction over this matter. § 33-1-311.
2. The CSI administers the Code to protect insurance consumers. § 33-1-311.

3. The Commissioner may revoke an insurance producer's license when an applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public. § 33-17-1001(1)(f).
4. Respondent's repeated failures to remit payment to insurance companies, thus forcing insured's to go without coverage despite having submitted payment to their insurance producer, demonstrates Respondent is incompetent, untrustworthy, financially irresponsible, or a source of injury or loss to the public.
5. The Commissioner may revoke an insurance producer's license when an applicant has violated or failed to comply with a provision of the Code. § 33-17-1001(1)(c).
6. It is a violation of the Code to willfully collect any sum as premium or charge for insurance that is not then provided or is not in due course to be provided. § 33-18-212(1).
7. Respondent violated the Code when he collected premium but failed to remit the premium to the affiliated insurer.
8. A producer must answer or produce records, documents, or other evidence requested by the Commissioner or the Commissioner's designee. § 33-1-315(5).
9. Respondent failed to answer or produce records in connection with CSI investigator requests.

### **RELIEF REQUESTED**

WHEREFORE, the CSI seeks the following relief:

1. That the Commissioner revoke Respondent's insurance producer license, # 0000058368, in accordance with § 33-17-1001(1)(c), (f).
2. That the Commissioner impose a fine not to exceed \$5,000 per violation of the Code, in accordance with § 33-1-317.

## **STATEMENT OF RIGHTS**

You are entitled to a hearing to respond to this notice, and to present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, § 2-4-601 et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place, and nature of the hearing.

If you wish to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Brett O'Neil, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Avenue, Helena, Montana 59601.

Your written notice must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for handling this case. Pursuant to § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any other adverse action against a professional license. If you request a hearing, you will be given notice of the date, time, and place of hearing.

You have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973), and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

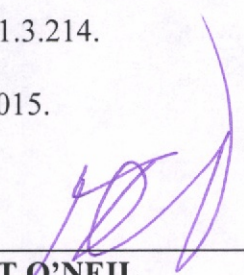
### **CONTACT WITH COMMISSIONER'S OFFICE**

If you have questions or wish to discuss this matter, please contact Shanni Barry, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Avenue, Helena, MT, 59601, 406-444-2040. If an attorney represents you, please make any contacts with this office through your attorney.

### **POSSIBILITY OF DEFAULT**

Failure to give notice or to advise of your demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions against you without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 26<sup>th</sup> day of June, 2015.

  
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**BRETT O'NEIL**  
Attorney for CSI

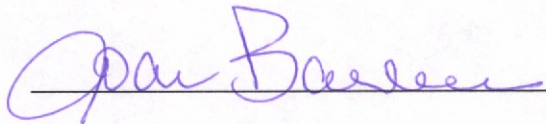
### **CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the foregoing document was sent by U.S.

Mail, postage paid, this 26<sup>th</sup> day of June, 2015, to the following:

Scott Johnson  
809 Dixon  
Missoula, MT 59801

Scott Johnson  
1014 South Avenue West, Suite C  
Missoula, MT 59801

  
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